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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

vs.

MRS. GEORGE NOTHNAGLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

PETITIONER'S BRIEF

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BRIEF OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

I

Opinion Below

The official report of the opinion delivered by the court below, the Supreme Court of Errors of the State of Connecticut, is Mrs. George Nothnagle, et al. *vs.* The New York, New Haven and Hartford Railroad Company, 139 Conn. 278, 93 A. (2) 165.

II

Statement of Jurisdiction

Jurisdiction of this Court to review this case by certiorari is conferred by 28 U. S. C. A., Section 1257. This provides that final judgments or decrees rendered by the

highest court of a State in which a decision could be had may be reviewed by this Court by writ of certiorari where any title, right, privilege or immunity is specially set up or claimed under the statutes of the United States. The statute of the United States involved is the Interstate Commerce Act, 49 U. S. C. A., Section 1, *et seq.*, and particularly Section 20(11) thereof.

The Supreme Court of Errors of the State of Connecticut is the highest court of Connecticut in which a decision could be had in this case. Article Fifth, Sec. 1 of the Constitution of the State of Connecticut; Section 7674 of General Statutes of Connecticut, Revision of 1949.

The claim of the application of the tariff of The New York, New Haven and Hartford Railroad Company (hereinafter called the Railroad), filed with the Interstate Commerce Commission in accord with the Interstate Commerce Act, was made by the Railroad in its Amended Answer (R. 4) and in its claims of law to the trial court (R. 9 and 10). This claim was overruled by the trial court in the Conclusions contained in its Finding (R. 9). The Railroad, on its appeal to the Supreme Court of Connecticut, assigned error to the Conclusions of the trial court and to its overruling of the claim of law (R. 11).

III

Statement of the Case

The Railroad is a corporation engaged in interstate commerce and passenger transit for hire. On October 5, 1949, Mrs. George Nothnagle purchased a ticket for passage upon trains operated by the Railroad from Meriden, Connecticut, to New Haven, Connecticut, and to Fall River, Massachusetts. The same day she boarded a train operated by the Railroad at Meriden, Connecticut, at 11:19 A. M. and rode to New Haven where she arrived with her

baggage shortly after 11:30 A. M. At New Haven she alighted from the train to the platform of the station owned, operated and maintained by the Railroad and was approached by a Red-Cap, an employee of the Railroad, who solicited her baggage. She surrendered her baggage to the Red-Cap with orders to have the baggage returned to her at the train leaving for Fall River on Track #8 at 12:40 P. M. The Red-Cap did not return the baggage to her at that time or at any other time. The baggage consisted of a suit-case containing a diamond ring, costume jewelry, two dresses, a suit, underclothing, shoes, and a silver mounted brush and comb, all of which belonged to her, and ties, shirts, pajamas, socks, shorts and handkerchiefs belonging to her husband. The baggage and its contents were reasonably worth $615. (The facts contained in this paragraph are set out in the Finding of the trial court (R. 7 and 8)).

On October 5, 1949, the Railroad had on file with the Interstate Commerce Commission a tariff entitled "New England Joint Tariff R. C. No. 3-N", stating the charges for and liability with respect to the handling of hand baggage and other personal effects of passengers by Red-Caps. Paragraph 2 of this tariff stated that the Railroad's liability for each piece of baggage or parcel (including its contents) would be limited to $25 unless a greater value was declared in writing by the passenger. No greater value was declared by Mrs. Nothnagle with respect to the baggage surrendered to the Red-Cap. (The facts contained in this paragraph are set out in the Finding of the trial court (R. 8)).

Suit for loss of the baggage was brought by a writ, summons and complaint dated December 28, 1949, returnable to the City Court of Meriden on the fourth Tuesday of January 1950 (R. 2, 3). The Railroad filed an offer of judgment of $25 on September 25, 1950 (R. 3). Issue was joined by an Amended Answer dated September 26, 1950.

The limitation of liability contained in the Railroad's tariff was set out in this Amended Answer as a defense (R. 4). At the trial the attorneys for the Railroad and Mrs. Nothnagle stipulated that all the matters alleged in the complaint were admitted, that the value of the contents of the baggage be set at $615 and that the Railroad's only defense would be the application of the tariff as filed with the Interstate Commerce Commission (R. 9). The trial court, Bogdanski, J., rendered a decision for Mrs. Nothnagle for $615 (R. 4 and 5) and Judgment was entered in her favor on November 25, 1950 (R. 5 and 6). Thereafter, on January 13, 1951, the Railroad appealed to the Supreme Court of Errors of the State of Connecticut (R. 6). That court held there was no error in the judgment of the trial court in a decision issued November 25, 1942 (R. 14). The court split 3 to 2. The majority opinion was written by Baldwin, J. In this opinion Jennings and Inglis, Js., concurred. Brown, C. J., and Roberts, J., dissented. The majority ruled that the baggage while in the Railroad's possession was not in interstate commerce, that the baggage was left for safekeeping and the Railroad was liable under Connecticut law as an ordinary bailee for the actual value of the property lost.

IV

Specification of Errors to Be Urged

The Supreme Court of Errors of the State of Connecticut erred:

1. In holding that the baggage while in possession of the Railroad at New Haven was not in interstate commerce.

2. In holding that on the facts Mrs. Nothnagle's journey was intrastate.

3. In holding that Mrs. Nothnagle's journey was suspended for a substantial time in New Haven.

4. In holding that Mrs. Nothnagle did not continue as a passenger of the Railroad in interstate commerce during her stay in New Haven.

V

ARGUMENT

A

The Judgment of the Supreme Court of Connecticut Was That the Baggage While in Possession of the Railroad Was Not in Interstate Commerce.

Mrs. Nothnagle carried her bag onto the train at Meriden and kept it with her until after she had alighted from the train at New Haven. There she was approached by a Red-Cap employed by the Railroad who solicited her bag. She surrendered it to him. At that time it came into possession of the Railroad (R. 7).

The Supreme Court of Connecticut said:

> "If the baggage, while in the possession of the defendant, was in interstate commerce, the limitation of liability set forth in the tariff filed with the interstate commerce commission is applicable and controls the decision of the court even though the plaintiff had no actual knowledge of the tariff" (R. 16).

The court rejected as not conclusive the fact that the Railroad was a common carrier engaged generally in interstate commerce (R. 16). It also found not conclusive the fact that Mrs. Nothnagle had purchased a through ticket from Meriden to Fall River (R. 16).

The court ruled ultimately that the bag was not in interstate commerce. Its reasoning to justify this conclusion is:

> "The finding describes the proposed journey from Meriden to Fall River as not being continuous. It was

suspended for a substantial time in New Haven. It was to be resumed only when the plaintiff started to board the train which would take her from New Haven to Fall River. Her journey, so far as it appears from the facts before us, was intrastate" (R. 16, 17).

The court thus found that the Railroad's tariff did not control and that there was no error in the judgment of the trial court.

B

The Judgment of the Supreme Court of Connecticut is Erroneous Because the Baggage While in Possession of the Railroad Was in Interstate Commerce.

The facts in this case are few and they are very clear. Nor is there any great problem in drawing legal conclusions from them.

It is only a short distance from Meriden, Connecticut, to Fall River, Massachusetts, by way of New Haven. Mrs. Nothnagle, with her ultimate destination in mind and intending to go all the way from Meriden to Fall River, bought a ticket entitling her to travel the entire distance on trains operated by the Railroad. The trip was to be made in two stages; one, from Meriden to New Haven, the other from New Haven to Fall River. The first stage was entirely within the State of Connecticut. At New Haven she would change to another train which would complete the journey to Fall River. She started on her journey at Meriden and shortly thereafter arrived at New Haven where she was approached by the Red-Cap. At that time it is obvious she intended to continue her journey. Also, before she gave the bag to the Red-Cap, she must have inquired when, and from where, the Fall River train would leave because she told him to return the bag to her at the train leaving for Fall River on Track #8 at 12:40 P. M.

(R. 7). At that time (*i. e.* 12:40 P. M.) the Red-Cap did not return the bag to her (R. 7). Thus, she must have been there at the train leaving for Fall River. Her intent to continue her journey is clear both at 11:30 A. M. when she arrived at New Haven and at 12:40 P. M. when she was to leave from New Haven. The interruption in her journey was caused by her need to change trains. There is nothing in the record to indicate that this interruption was of her choice or for her convenience or due to anything but regular train schedules or that she did anything but wait in the interval.

At all times—at Meriden at 11:19 A. M., at New Haven at 11:30 A. M. and at New Haven at 12:40 P. M.—Mrs. Nothnagle had on hand an interstate railroad to take her from Meriden to Fall River. Having purchased a through ticket, at all times, she had the right under this contract with the Railroad to go on an interstate trip. At all times, she had the intent to go on an interstate trip. The Supreme Court of Connecticut in its opinion states that the journey was not continuous and it was suspended for a substantial time in New Haven (R. 17). It was not continuous because it was to be made in two stages and it was suspended while connections were being made. If this reasoning is correct, then, whenever a journey is made to an out of state point by connecting trains, the journey loses its interstate character. The interruption here was 70 minutes. Train connections can be minutes or even hours apart. In any event, the interruption is a temporary one only. There should be no real legal significance in such a temporary interruption whether the passenger gets off one train and immediately boards another which might wait a minute or two before leaving, whether the passenger gets off one train and can see the other approaching in the distance or whether the passenger gets off one train and has to wait some time for the other to come.

That the facts that the journey from Meriden to Fall River was not continuous and that it was suspended temporarily in New Haven, in and of themselves, change what would otherwise be an interstate trip into one of an intrastate character appears a completely unreasonable conclusion.

If the ruling of the Supreme Court of Connecticut is allowed to stand it will control the hundreds of thousands of daily Red-Cap and porter services provided in railroad, air line, bus and steamship stations and terminals throughout the country.

The lower court cites no decision in support of its conclusion and, in fact, there is none. There have been a number of similar Red-Cap cases, including *Franklin* v. *Southern Pac. Co.*, 203 Cal. 680, 265 P. 936 (1928), *cert. den.* 278 U. S. 621, 73 L. Ed. 542; *Tilson* v. *Terminal R. Ass'n of St. Louis*, 236 S. W. (2) 42 (St. Louis C. of A. Mo. 1951); *Kirchoff* v. *Southern Pac. Co.*, 68 F. Supp. 877 (D. C. Calif., 1946); *Birmingham Terminal Co.* v. *Wilson*, 249 Ala. 397, 31 So. (2) 563 (1947); but the precise point involved in this case was not raised or passed upon in any of them.

Red-Cap services in general have been held to be "transportation" within the meaning of the Interstate Commerce Act, 49 U. S. C. A., Section 1, *et seq.*, and subject to regulation by the Interstate Commerce Commission. *Stopher* v. *Cincinnati Union Terminal Co.*, 246 I. C. C. 41 (1941); *Dayton Union Railway Co. Tariff for Red Cap Services*, 256 I. C. C. 289 (1943); *Red Cap Service, Cincinnati, Columbus, Indianapolis*, 277 I. C. C. 427 (1950). The *Stopher* case was cited in *Williams* v. *Jacksonville Terminal Co.* and *Pickett* v. *Union Terminal Co.*, 315 U. S. 386, 86 L. Ed. 914 (1942), wherein this court had before it the question of payment of minimum wages to Red-Caps under the Fair Labor Standards Act, 29 U. S. C. A., Section 201, *et seq.*

However, it was conceded that Red-Caps were engaged in interstate commerce.

There have been decisions that changing trains en route does not make an otherwise interstate journey into one of intrastate character. These involve the segregation laws, so-called. *Washington B. & A. Electric Ry. Co.* v. *Walker*, 289 F. 598 (D. C. 1923); *Lee* v. *Commonwealth*, 189 Va. 890, 54 S. E. (2) 888 (1949).

In other cases passengers, intending ultimately to cross state lines, have attempted to break their journey and use separate lower local fares than the through interstate one. The courts uniformly have ruled that the real character of the trip must be found and that these subterfuges cannot change the journey which was actually an interstate one into an intrastate one by a break in the journey en route. *Illinois C. R. Co.* v. *Holman*, 106 Miss. 449, 64 So. 7 (1914); *Reynolds* v. *St. Louis Southwestern R. Co.*, 195 Mo. App. 215, 190 S. W. 423 (1916); *Missouri K. & T. R. Co.* v. *Ashinger*, 63 Okla. 120, 162 P. 814 (1916).

These and other cases have been collected in the annotation entitled, *Breaking continuity of passage or shipment as affecting its interstate character*, 60 A. L. R. 1465 (1929), 155 A. L. R. 936 (1945).

In short, based on the facts, and the available law, the lower court's judgment is erroneous because the baggage while in possession of the Railroad was in interstate commerce.

VI

Conclusion

The only reasonable conclusion from the facts and law is that Mrs. Nothnagle was an interstate passenger, that she continued in this status during her stay in New Haven.

As the judgment of the Supreme Court of Errors of Connecticut is not correct it should be reversed.

Respectfully submitted,

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